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the time of the application for a change, there was a good cause within the meaning of Code 1887, § 4036 [Code 1904, p. 2126] as amended, and a change should be granted.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, § 243.]

SMITH'S ADM'R *v.* NORFOLK & W. RY. CO.

Jan. 16, 1908.

[60 S. E. 56.]

1. Railroads—Collisions at Crossings—Negligence—Contributory Negligence.—Negligence of a railroad company in regard to a train approaching a highway crossing does not relieve a traveler on the highway from the duty of exercising diligent care for his own safety; the duty of the traveler being as imperative as that of the railroad company.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, §§ 1022, 1071-1074.]

2. Same—Care Required of Persons Near Tracks.—A traveler on a highway must, before crossing a railroad, use his senses of sight and hearing, and his failure to do so is, as a general rule, negligence; and, since the track is a proclamation of danger to him, he must make the acts of looking and listening reasonably effective.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, §§ 1043-1056.]

3. Same.—Where a traveler is warned, or by the exercise of care commensurate with the known danger would be warned, of the near approach of a railroad train, it is his duty to keep off the track until the train has passed, and to go on the track under such circumstances is negligence defeating a recovery for injuries inflicted in the resulting collision.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 41, Railroads, § 1026.]

4. Same—Proximate Cause.—Negligence of a railroad company in regard to a train approaching a highway crossing does not authorize a recovery for the death of a traveler struck by a train at the crossing, unless the negligence was the sole proximate cause of the injury.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 41, Railroads, §§ 1090-1095.]

5. Same—Contributory Negligence—Reliance on Precautions on Railroad's Part.—A traveler at a railroad crossing has the right to presume that the railroad company will obey the statutes and sound the signals required thereby, and may rely on this presumption, but such reliance does not relieve him from care on his part, and one approaching a railroad track must not approach at such a rate of

speed that, when he reaches a point where he can see or hear a train, it is too late to stop and protect himself from injury.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 41, Railroads, §§ 1071-1074.]

6. Negligence—Contributory Negligence.—The rule that a person in an emergency is not required to exercise the prudence required of prudent persons under ordinary circumstances applies only where such person has been placed in the situation of danger by the negligence of another not united with his own negligence.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 37, Negligence, §§ 99, 100.]

7. Railroads—Accidents at Highway Crossings—Contributory Negligence.—In an action against a railroad company for the death of a traveler struck by a train at a highway crossing, evidence examined, and held to show that decedent was guilty of contributory negligence defeating a recovery.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 41, Railroads, §§ 1144-1149.]

SCHERMERHORN'S EX'X *v.* COMMONWEALTH et al.

Jan. 16, 1908.

[60 S. E. 65.]

Courts—Writ of Error—Jurisdiction—Amount in Controversy—"Debt."—Under Constitution, limiting the jurisdiction of the Supreme Court of Appeals to cases involving more than \$300, except in controversies concerning the right of the state or municipal corporations to levy taxes, and cases involving the construction of any statute, etc., the Supreme Court of Appeals has no jurisdiction to review a judgment dismissing an application to correct an assessment on the ground that the tax amounting to less than \$300 was erroneously assessed, resulting in double taxation, without involving the right of the state or county to make the assessment, or without raising the question of the uniformity of the tax within Const., § 168 [Code, 1904, p. cclxii], a tax being a "debt" due by the citizen to the taxing power for which an action of debt will lie.

[Ed. Note.—For other definitions, see Words and Phrases, vol. 2, pp. 1864-1887; vol. 8, p. 7628.]